

DOCUMENT RESUME

03277 - [A2233368]

[Reconsideration of Protest that System Proposed by Awardee Did Not Meet Solicitation Specifications]. B-187720. August 9, 1977. 4 pp.

Decision re: International Business Machines Corp.: by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government (806).

Organization Concerned: Geological Survey; TRW, Inc.  
Authority: F.P.R. 1-3.805-1(a) (5). 4 C.F.R. 20.9.

The protester requested reconsideration of a prior decision denying protest of an award for a data processing system. The original decision was affirmed since the facts not discussed in the decision did not alter the conclusion that the protester's own similar deviations to the solicitation requirements, which the protester now considers material, were also accepted by the agency without an amendment to the solicitation. The request for a conference on the reconsideration was denied since a conference will only be granted when the matter cannot be promptly resolved without a conference. (Author/SC)

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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

A. Zuckerman  
Proc II

FILE: B-187720

DATE: August 9, 1977

MATTER OF: International Business Machines Corporation  
• Reconsideration

## DIGEST:

1. Original decision is affirmed where facts not discussed in decision do not alter conclusion that protester's own similar deviations to RFP requirements which it now considers material were accepted by agency without RFP amendment, since protester was reasonably on notice that such deviations were not considered by agency to be either material or a relaxation of requirements, requiring RFP amendment pursuant to FPR § 1-3.805-1 (1976).
2. Since GAO Bid Protest Procedures do not explicitly provide for conference when request for conference is made for the first time on reconsideration and because it is interest of those procedures to effect "prompt resolution" of reconsideration requests, request for conference will only be granted where matter cannot be promptly resolved without conference.

International Business Machines Corporation (IBM) requests reconsideration of our decision of May 10, 1977, which denied that firm's protest of an award to TRW, Inc. for the EROS Digital Image Processing System (EDIPS) for the U.S. Geological Survey (USGS) EROS Data Center (EDC). The EDIPS system will process National Aeronautics and Space Administration (NASA)-furnished high density digital tapes into first generation film imagery (masters) and other computer compatible tapes.

IBM protested that the system proposed by TRW did not meet specification requirements. However, we found that the specifications, when read in conjunction with the "procurement philosophy" contained in the request for proposals (RFP), required no more than what TRW offered. We based our conclusions on the statements in the "procurement philosophy" which represented the detailed specification as a "concept" which USGS believed to be feasible and consistent with its operational needs and requirements but which invited offers to "optimize" the system to save initial and operational costs so long as "throughput" and "output" (performance and

functional) requirements of the specification were maintained. Our decision found that even though the TRW approach varied from the detailed specification by eliminating the need for a high density digital tape product for film production (HDTPF), its approach (as well as IBM's) maintained the "throughput" and "output" requirements, albeit in a manner which varied from the RFP's detailed specifications.

We also found that although the RFP did not specifically list the output products, IBM's proposal reflected awareness of the identity of those products and also eliminated certain intermediate tape products which were essential to the function of the USGS concept detailed in the specifications but not to the systems proposed by either offeror. Although IBM complained that USGS, by not amending the RFP to reflect TRW's proposed elimination of the intermediate tape product (HDTPF) in its system design, violated Federal Procurement Regulations (FPR) § 1-3.805-1(a)(5) by not affording IBM an opportunity to meet the agency's changed requirements, we found that the agency was not required to apprise all offerors of the proposed elimination of items which were not required by the particular design proposed to meet the RFP performance requirements.

IBM asserts the same arguments in support of its request for reconsideration as were considered in the original protest. However, it does state that the HDTPF was required to be permanently archived, and that the RFP required that offerors list their deviations to the detailed specification. Obviously, if the agency's operating needs included permanent storage of the tape, it had to be produced by the system, and would, of necessity, be an "output" rather than an "intermediate" product.

With respect to the contention that the HDTPF was to be permanently archived, we recognize that the detailed specification, when read by itself, clearly mandates the production of that tape. However, as in our original decision, we again emphasize the RFP must be read as a whole, including the "procurement philosophy". The functions of the EDIPS system (as described in the specification) are, in pertinent part, to provide for the production of first generation film imagery from digital image data, and to produce computer compatible tapes. To achieve this result, the EDIPS specification detailed the system design discussed above, and in so doing specified certain tape products which were essential to the operation of that concept. Film and computer compatible tape

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were specified in the "procurement philosophy" as the "output products" the system was required to generate for dissemination to the public (film products distributed to the public are actually copied from the first generation film imagery).

To accomplish the necessary functions of the system, section 2 of the specification described operational workflow in the context of the system design set forth in the specification. Section 2 contained the following specific caveat to the offerors, which in our opinion reflected the agency's recognition that proposed designs might vary significantly from the agency's system design:

"The following sections describe the operational philosophy of the EDIPS in general terms. These requirements shall be reflected in the EDIPS design features, which shall permit the execution or performance of the operational functions defined herein."

Contrary to IBM's contentions, the record does not reflect a requirement for permanent storage of the HDTPF tapes. As the offerors were advised, the only purpose of such a tape was to drive the equipment necessary to produce the "first generation film imagery" i.e., the "master copy" from which film products are produced. That function is accomplished in the TRW system by another means which eliminates the need for the HDTPF tape. If, for some reason, additional master copies are needed they can be produced by reprocessing the original NASA tape. In our view, the TRW system permits the "performance of the operational functions" required by the specification--at a lower cost than the IBM approach.

However, our original decision did not consider the impact of a series of answers offered by the contracting officer to questions posed by the offerors. The contracting officer did state that both the HDTPF tape, as well as one other so called intermediate tape (which IBM eliminated in its design), were to be stored. While we believe the combination of the mandatory language of the specification and the contracting officer's answers may have created an uncertainty in the minds of the offerors as to the archival requirements for those tapes initially, we are still of the opinion that IBM's own deviations from the specification requirements which were accepted by the agency with no subsequent amendment reasonably put that firm on notice that elimination of those tapes was not considered by the agency to be a material deviation from the specifications. As we concluded in our original decision, in our view, IBM "was or should have been aware of the non-mandatory nature of certain aspects of the specifications."

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With regard to the requirement in the RFP that offerors list "deviations" (and their rationale) to the system concept, such requirement does not change our view discussed above of what was required by the specifications. We believe the USGS would reasonably want to know, in a concise fashion, those areas in which an offeror's design "deviated" from the design set forth by the agency.

Although we do not believe IBM was prejudiced in this procurement, we think that the contracting officer had a unique opportunity to avoid any potential ambiguity with regard to the tape storage requirements of the proposed EDIPS operation when responding to direct inquiries on the subject prior to the receipt of proposals, by emphasizing the context in which the replies were offered, i.e., within the conceptual framework of the specification. Therefore, we recommend that future solicitations avoid any potential confusion by setting forth more specific detail as to those portions of the specifications which could not be varied.

We note that in its request for reconsideration, IBM requested a conference to "aid in sorting out the matter." However, our Bid Protest Procedures do not explicitly provide for conferences in this situation. See 4 C.F.R. § 20.9. Since it is the intent of the procedures to effect "prompt resolution" of reconsideration requests, we believe a request for a conference should be granted only where the matter cannot be promptly resolved without a conference. In our judgment, this is not such a case.

For the reasons set forth herein, the prior decision is affirmed.

  
Deputy Comptroller General  
of the United States